IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2675 & 2676 of 2003

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRABHATBHAI GOVINDBHAI DANGAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2675 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MS HARSHA DEVANI AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT

Date of decision: 28/05/2003

ORAL JUDGEMENT

1. In these two petitions, the challenge is against

the detention orders passed by the respondent authorities against the petitioners, and since they raise identical questions of law, they are being disposed of by this common judgment.

2. The petitioners came to be detained under the provisions of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (for short `the Act'). The detention orders are challenged on various and divergent grounds in both these writ petitions under Article 226 of the Constitution. The respondents have filed their affidavits-in-reply.

3. After having heard the learned advocate for the petitioners, the Assistant Government Pleader, and the Standing Counsel for the Central Government appearing for the respondent no.4, and considering the facts and circumstances emerging from the record of the present cases, both these petitions are liable to be allowed, and both the detention orders challenged in these two writ petitions are required to be quashed and set aside on the sole ground of non-supply of copies of the documents relied on in a legible form or legible way. It is a settled proposition of law that once the documents, on which reliance is placed by the detaining authority, supplied to the detenu, partly or fully, are shown to be illegible, then obviously, it would affect the right to make effective representation against the detention orders. This proposition is very well settled since long by a Division Bench of this Court in Pokhrajbhai Sohanbhai Chandel v. District Magistrate, Surat and others reported in 32(2) [1991(2)] GLR 753, wherein it has been held that once the copy of the document or copies of the documents are illegible, it would create adverse impact on making effective representation, and thereby the detenu's right under Article 22(5) of the Constitution of India will be affected, and therefore, on this sole ground, the petitions are required to be allowed, quashing the questioned detention orders in both these matters.

4. Both the petitions are accordingly allowed. The impugned detention orders are quashed and set aside, and the detenus are ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute without any order as to costs. Direct service is permitted.

(J.N. BHATT, ACTING C.J.)

[SNDEVU]
P.S.